

FILED
CLERK OF COURT
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
2007 OCT 10 PM 4:28
DISTRICT COURT
CLERK OF MASS

CIVIL ACTION
NO. 05-11738-EEH

Brendan M. **McGUINNESS**,
Plaintiff,

vs.

James R. **BENDER**, et al.
Defendants.

**PLAINTIFF'S REPLY TO DEFENDANTS'
OPPOSITION TO THE MOTION TO SUPPLEMENT
AND/OR JOIN U MASS DEFENDANTS.**

Plaintiff has moved to supplement his original claims against the Department of Correction (DOC), and/or Join certain defendants from the U Mass Correctional Health (UMCH), a medical care provider for the DOC. UMCH has also filed an objection to the request of plaintiff. Plaintiff replies to these objections below.

- 1.) The allegations against the DOC defendants are very straightforward; they have survived both Rule 12(b) and Rule 56 motions by the DOC. They are set for trial on 1/2/07.
- 2.) Plaintiff alleges that the DOC subjected him to various measures and conditions of confinement which effectively punished him prior to a trial, as a pretrial detainee, in contravention of state and federal law.
- 3.) The last and greatest of the alleged violations involved the alleged use of force upon plaintiff; this force was used in response to a suicide attempt made by plaintiff (hanging); at the time of this use of force, plaintiff claims to have been unconscious, face down on the floor, strangled by a

self-inflicted ligature, and absolutely a non-threat to the responding staff (Move Team), which was suited up in full boby armor. (It took over twenty minutes for staff to help plaintiff after the call was received of a possible suicide.) These Move team members are all defendants. Plaintiff suffered, inter alia, a severe gash to his left eyebrow which bled profusely, caused great pain and required seven sutures to close. Plaintiff maintains that the specific act of force which caused this injury was inflicted for no other reason than to cause harm whereas plaintiff was semi- or unconscious under the control of no less than three other large men, face down and helpless.

- 4.) Now we must step back a bit to understand why the new proposed claims against UMCH are integral to the resolution of the claims at bar. First, the suicide attempt and resulting beating occurred on 1/31/05. On 1/30/05, plaintiff had been involved in a fight with two guards while he was out of his cell in handcuffs to receive medication. Second, one of his medications was oxycodone (a morphine-based, highly addictive pain killer--plaintiff had two broken bones in his right hand at the time). Third, as a result of misbehavior, and for no good medical reason, proposed defendant Dr. Marsha Tanur discontinued the oxycodone abruptly, using neither a weaning-off process nor employing alternate methods of administering the drug. (NOTE: plaintiff's other drugs were not discontinued, only the addictive one.)
- 5.) The DOC and UMCH defendants would and have asked this Court to summarily deny plaintiff's efforts to correlate the abrupt discontinuation of a knowingly-addictive substance, theretofore administered for no less than two months straight, with the withdrawal-induced suicide-attempt the very next morning.

ARGUMENT.

The DOC, for its part, has asked the Court to shoot down the joining of the issues on the ground that it "is futile and highly unlikely to survive a motion for summary judgment." This could hardly be further from the truth. The UMCH defendants have argued ~~the actions of UMCH is similar~~ along a similar vein that a causal link cannot be shown between the discontinuation of the opiates and the suicide-attempt the

plaintiff engaged in.

The defendants are asking this court to decide now, on the barest of proof, whether the actions of the UMCH defendants did in fact contribute to the injury suffered. (Withdrawal per se is a serious condition for purpose of this Court's analysis. Kelly v. County of Wayne, 325 F. Supp. 2d 788, ___ [E.D. Mich. 2002].)

Added to all of this is the well-established medical recognition that there is a direct correlation between opiate withdrawal ^{& suicide.} Plaintiff, given the chance through discovery, would easily prove this. See, e.g., **EXHIBIT A**, attached:

Page One: Dr. Tanur, a woman who has never before dealt with plaintiff in any capacity, decides over the phone to discontinue the oxycodone, with a vague and ultimately useless post script to monitor for signs of withdrawal every eight hours--clearly showing her subjective awareness that her choice had ramifications as far as withdrawal is concerned. (**subjective component proven.**) Defendants Kavanaugh and Merrill signing the acknowledgement of this order, which was never carried out.

Page Two: The day after the suicide-attempt, nurse's notes state "inmate said to dr. Jaiswal 'I feel like I am going through withdrawal'."

Page three: Nursing staff try to attribute discontinuation of oxycodone to "tampering" with meds--an allegation even the guards did not make in their report. EX.AA, p. 3a, b, c and d.

Page Four: Precisely one week before the suicide attempt the plaintiff expressed to his psych counsel that he was experiencing "morbid[] depress[ion]" as a result of a new regimen of meds, showing that plaintiff did (in addition to his lengthy past record of suicide attempts) display a proclivity and vulnerability to suicide if Dr. Tanur had been diligent enough to do her job prior to taking the "cold-turkey" approach.

Page Five: Another psych counselor at the prison, John Reins, notes that on the day of the suicide attempt, plaintiff had been complaining that the discontinuation of the oxys was something he could not handle. (An hour or two before the suicidal incident.)

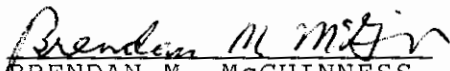
This flimsy showing of subjective knowledge on Dr. Tanur's part, no action by Kavanugh or Merrill on explicit orders to check for signs of withdrawal, a horrible suicidal/psychological history on plaintiff's part making him particularly susceptible to self-destructive behavior-----there is no way this case could be shot down summarily. There are issues of fact here which preclude judgment prior to full trial by jury.

As for why these UMCH defendants should be joined to the DOC complaint, aside for the obvious issue of economy, is that were there no (for now allegedly) deliberately indifferent curtailment of the oxys at a time in plaintiff's life where he had already told psych staff that he was morbidly depressed (related to th DOC's refusal to allow plaintiff to see his new-born daughter), withdrawal would not have resulted. Withdrawal alone is enough to pass the serious injury test. But the intensity of that withdrawal, and the fact that plaintiff was left in total isolation ---these events are all connected and make sense only when understood in context.

As a pro se litigant, if I brought the claims piecemeal or in the wrong order, **I** beg the court's indulgence. The total experience of plaintiff's pretrial experience will be shown to have subjected him to punishment on a grand scale long before he was ever convicted, in violation of an accused's most basic rights. His state-related

claims (see MacDougall v. Commonwealth, ___ Mass. ___ [August, 2006]) [see n. 11]) are therefore part and parcel and should be dealt with as a matter of sound federal discretion.

Respectfully submitted,

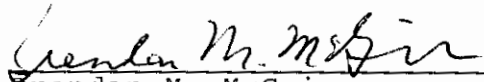

BRENDAN M. MCGUINNESS
MCI-Cedar Junction
P.O. Box 100
S. Walpole, MA 02071

DATED: September 25, 2005

cc. William Saltzman, Esq.
Lisa R. Wichter, Esq.
file.

CERTIFICATE OF SERVICE

I do hereby certify and swear as plaintiff in this case that copies of all of the enclosed were caused to be served upon both counsel referred to directly above via regular mail this 26th day of September, 2006.


Brendan M. McGuinness
PRO SE

EXHIBIT

A

MASS CORRECTIONAL HEALTH

Page 1

PHYSICIAN'S ORDER

PRESCRIPTION ORDER - FOR DEPARTMENT OF CORRECTION INSTITUTIONAL USE ONLY

NAME McGuinness Brandon ID NUMBER A91830 D.O.B. 12-6-72
INSTITUTION SBCC ALLERGIES NKDA
DATE 1-30-05 TIME 1300

ORDERS

T.O. Dr. Tanur / Jasen Karamoglu
- Hold Oxycodone 10mg PO Four times
Per/day until F/U & NP/MD —
- Assess Inmate Q8 hours For signs
of withdrawal —

note 1/30/05 Louise Muller

SIGNATURE _____

Interchange is mandatory unless the prescriber writes the words
"no substitution" in this space:

PRINT NAME _____

UMASS CORRECTIONAL HEALTH

PROGRESS NOTES

SBCC-WF
Institution

NAME: McGuinness, Brendan ID # A91830 D.O.B. 12-6-72

DATE	TIME	NOTES
2/1/05	0530	S/O IM remained on 15 min mthw - checked jug by med staff, but not awakened given his violent attempts of attacks @ nurses in past - lying face down on mattress so unable to assess facial features above eyes or neuro checks & VS deferred because of his violent nature. A suicide attempt & resulting eye injury - P VS, neuro checks, when feasible - continue 15' mthw - Have Mental Health assess IM as well as MD for possible neuro S/O - Linda Muth
2/1/05	1330	S/O: inmate under mthw. 9 15 min check. Cooperative. Paling in room & I feel like I am going thru with charcoal. Inmate said to be fair trial at court. Wearing security gown. A: moving all extremities & no difficulty. (L) orbital cont & swelling. Eyeball & abnormalities. no vomiting seen. Inmate ate 2 meals today, per officer's report. P: continue mthw. Observe for hemorrhaged S/O. monitor (L) orbital site for S/O infection. no new orders written yet. Carol Seligman

MASS CORRECTIONAL HEALTH

Page 3A

PROGRESS NOTES

SBCC
Institution

NAME: McGuinness Brandon ID # A91830 D.O.B. 12-6-72

DATE	TIME	NOTES
1-30-05	1300	Inmate assaulted officers during medication rounds, when they caught him trying to divert his medication. T.O. From Dr. Tabor to hold Oxycodone until Flv by NPA MD. Jason Keaneghan
1-31-05	12:30 pm	MD White S. Pr. ^{was} brought to trauma room for cut on his (L) Eye brow laceration. As told by Nurse that pr. tied sheet on his neck & it was cut open did not do any harm to him & then pr. got under his bed as he was secured he hit something under his bed & got laceration on his (L) Eyebrow. 1 1/2" laceration on (L) Eyebrow. Under sterile conditions 7 sutures 4-0 silk. Pr. tolerated procedure well. Lidocaine 1% used for local anaesthetic. Acc Laceration Sutured Plan: Pr. see POS.

Sammy

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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF CORRECTION

DISCIPLINARY REPORT

Inmate MC GUINNESS, BRENDAN M Commit No A91830 Housing Unit L-3NSMU
 Date 30-JAN-2005 D- Report No. 50624 Institution SOUZA-BARANOWSKI CORRECTIONAL

OFFENSE(S) & CODE NO.:

02-VIOLATING ANY DEPARTMENT RULE OR REGULATION
 08-CONDUCT WHICH DISRUPTS
 18-FIGHTING WITH, ASSAULTING, OR THREATENING ANOTHER PERSON WITH ANY OFFENSE AGAINST
 PERSON OR PROPERTY
 32-VIOLATING ANY LAW
 33-ATTEMPTING TO COMMIT ANY OFFENSE

Major ☒ Minor ☐

Description of Offense(s)

At approximately 12:30 PM while escorting the nurse on afternoon medication rounds, I, C.O. McGinty, was assaulted by inmate McGuinness, Brendan A91830 housed in cell 16 in unit L-3.

During the medication rounds inmate McGuinness was handcuffed in the front for medication distribution. The cell door was opened and inmate McGuinness took his first dose of medication and then struck me with his restrained wrists on the right side of my head. Inmate McGuinness pushed the medication cart away from his cell and exited the cell violently assaulting Officer Santiago as well. While inmate McGuinness was being subdued, he continued to assault staff with his hands and feet as well as spitting striking this officer in the head and uniform collar with saliva. Responding staff helped subdue the inmate by placing him in waist chains and leg irons. I had no further contact with inmate McGuinness. EOR

Has Inmate been placed on Awaiting Action Status Yes ☒ No ☐

Referred to DA ☒ Yes ☐ No Referred to DDU ☒ Yes ☐ No

Reporting Staff Daniel McGinty S Date 30-JAN-2005 Time 13:52

Days off Wed Thu
 Shift 7-3

Shift Commander William Ryan Date 30-JAN-2005 Time 19:09

Disciplinary Officer James Hart R Date 31-JAN-2005 Time 07:05

Results GUILTY

Code Description	Sanctions	Start Date	End Date	# of Units	SS	Amount
02-VIOLATING ANY DEPARTMENT RULE OR REGULATION	Comb W/#18	20050801		0		

20050802 11:35

EXHIBIT

9

Note: upon guilty pleas,
 see next page.

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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF CORRECTION

DISCIPLINARY REPORT

Inmate	MCGUINNESS, BRENDAN M	Commit No	A91830	Housing Unit	L-3NSMU
Date	30-JAN-2005	D- Report No.	50624	Institution	SOUZA-BARANOWSKI CORRECTIONAL

08-CONDUCT WHICH DISRUPTS	Comb W/#18	20050801	0
18-FIGHTING WITH, ASSAULTING, OR THREATENING ANOTHER PERSON WITH ANY OFFENSE AGAINST HIS PERSON OR PROPERTY	Rec. DDU	20050801	665
32-VIOLATING ANY LAW	Comb W/#18	20050801	0
33-ATTEMPTING TO COMMIT ANY OFFENSE	Dismissed		

Reviewing Authority	Thomas Dickhaut E	Date	15-APR-2005	Time	15:09
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Plaintiff received
two years DDU
See p. 3d

20050802 11:35

Inmate Sentence Listing

W86294

MCGUINNESS, BRENDAN

Report Date: 2006 0614 15:28:35

Added Date 2 Additional
Sentences - # 2 & # 3 -
No Change in Dates

Sentence Unit: A

Sent #: 1 Statute: 265 19 b
UNARMED ROBBERY

Page 3d
150
PE: 20070906
Min: 20070906
Max: 20070907
Gcd:

Off. Date: 20040308
Sent. Type: State Prison
Imposed: 20050928
Invoked: 20050928 3Y 6M TO 3Y 6M 1D
Jail Credit: 570
Effective: 20040307
Court: NORFOLK SUP COURT
Docket: 2004-00169-01

Statutory good Time Restrictions.

* Sent #: 2 Statute: 265 13A a 170
ASSAULT OR ASSAULT AND BATTERY

Off. Date: 20050130
Sent. Type: WORCESTER
Imposed: 20060609
Invoked: 20060609 TO 1Y
Jail Credit: 2
Effective: 20060607
Court: CLINTON DC
Docket: 0568CR1600-ct 1

PE:
Min:
Max:
Gcd:

Statutory good Time Restrictions.

* Sent #: 3 Statute: 265 13A a 170
ASSAULT OR ASSAULT AND BATTERY

Off. Date: 20050130
Sent. Type: WORCESTER
Imposed: 20060609
Invoked: 20060609 TO 1Y
Jail Credit: 2
Effective: 20060607
Court: CLINTON DC
Docket: 0568CR1600-ct 2

PE:
Min:
Max:
Gcd:

Statutory good Time Restrictions.

2 Years for
same assault.

Paroled

Revoked

Returned

Escaped

Returned

Page 5

UMASS CORRECTIONAL HEALTH

PROGRESS NOTES

SBCC

Institution

NAME: McGuinness, Brendan ID # A91830 D.O.B. 12-6-72

DATE	TIME	NOTES
11/31/05	1150	D: See Incident Report #144237 dated 11/31/05. I/m did not respond, verbally or non-verbally (via movement) @ attempts of engagement by medic v. Info. reported to shift commander + move team entered cell.
		A: I/m on belly under bed facing away from cell door. Undetermined if I/m made attempt @ self harm or if he intended to "play dead" as a tactic on move team i.e. he'd already assaulted 2 CO's
12/1/05		→ 01/31/05 and via RN was reportedly angry over being refused his oxy med.
		P: I/m placed in 4 pt restraint security watch. Assess MH condition upon release - Ascertaining if MHW warranted.
		John Kern

**UMASS CORRECTIONAL HEALTH
SICK CALL REQUEST FORM**

Print Name: _____ ID#: _____

Date/Time _____ Housing Location: _____

Check **ONLY** One Box: ☐ Medical ☐ Dental ☐ Mental Health

Nature of problem or request: _____

I consent to be treated by the healthcare staff for the condition described above.

Inmate Signature _____

**PLACE THIS SLIP IN MEDICAL BOX OR DESIGNATED AREA
DO NOT WRITE BELOW THIS AREA**

Date/Time Recieved

Institution _____

Slip Sorted by: _____

REFERRED TO:

☐ Nurse

☐ Midlevel

☐ Physician

☐ Mental Health

☐ Dental

☐ Other _____

Subjective:

Objective: T _____ P _____ R _____ B/P _____ WT _____

Assessment:

Plan [include inmate education]:

Signature & Title: _____ Date: _____ Time: _____